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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,432	08/15/2003	Richard L. Watson	80191.00034	9875
32584	7590	05/17/2004	EXAMINER	
LOEFFLER JONAS & TUGGEY, LLP 755 EAST MULBERRY STREET SUITE 200 SAN ANTONIO, TX 78212			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/642,432	WATSON, RICHARD L.	
	Examiner	Art Unit	
	Robert L. Nasser	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-43, 45-50 is/are rejected.
- 7) ☐ Claim(s) 44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3736

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 35, 37-41, 45, and 47-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-19 of U.S. Patent No. 6,607,486. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are merely broader versions of the patented claims, and as such, are covered by the patented claims.

Claims 36, 42, and 43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-19 of U.S. Patent No. 6,607,486 in view of Rawson 5,436,444. With respect to claim 36, Rawson teaches that any appropriate means may be used to attach the sensor to the user (see column 8, lines 34-50). The examiner takes official notice that adhesive is an appropriate means. Rawson further shows a similar body mounted sensor where the transmitter is wireless and the sensor is a single loop of fiber optics. From these

Art Unit: 3736

teachings, it would have been obvious to modify the previous invention to use the wireless transmitter and sensor of Rawson, as it is merely the substitution of one known sensor and transmitter for another.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the different surface portions of claim 38 or the multiple fibers of claim 44 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35, 40-43, 45, and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawson. Rawson shows an optical strain gauge with a transmitter that is worn on the body to sense body movements. This would indeed include labor contractions. The examiner notes that the language as to sensing uterine contractions is intended use and is not sufficient to define over identical structure intended for used for a different purpose. The examiner notes that the fiber is either embedded in a

Art Unit: 3736

flexible polymer, adhesively attached to a flexible polymer, or connected in a pouch between two sheets of a flexible polymer. Therefore, the bottom sheet has the attachment surface on the bottom and a second surface on the top, which is adjacent the sensor. The second sheet then is a drape or a cover. With respect to claims 41 and 45, if applicant were to specify that the drape overlies the sensor pad in use, it would overcome this rejection. The system of Rawson further has a power source 38 and wireless transmitter 30.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rawson. Rawson teaches that any appropriate means may be used to attach the sensor to the user (see column 8, lines 34-50). The examiner takes official notice that adhesive is an appropriate means.

Claims 37-39, and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if the double patenting rejection were overcome and if the claims were rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3736

Claim 44 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 46 would be allowable if the double patenting rejection were overcome.

Claims 37 and 39 define over the art in that none of the art shows a generally elliptical sensor. The examiner notes that applicant makes the sensor elliptical to better conform to the abdomen. Hence, it is more than mere design choice and there is no teaching or suggestion to make the sensor of Rawson generally elliptical. Claim 38 defines over the art in that none of the art has a plurality of surface portions with different shapes, as claimed. Claim 44 defines over the art in that none of the art uses multiple fibers, as claimed. Claim 46 defines over the art of record in that none of the art shows the electronics box in a compartment between the two surfaces of the adhesive pad, as claimed. Claim 49 defines over the art in that none of the art has the electronics box in the pouch, as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jayaramann et al shows a device for monitoring body movements that has optical fibers woven into a suit.

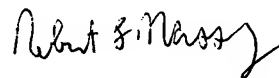
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RLN
May 12, 2004

Robert L. Nasser
Primary Examiner
Art Unit 3736



ROBERT L. NASSER
PRIMARY EXAMINER

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